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FORM**

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Total Number of Pages in This Submission

11

Application Number

09/867,200

Filing Date

05/29/2001

First Named Inventor

Robert H. Scheer

Art Unit

3627

Examiner Name

Cuff, Michael A.

Attorney Docket Number

31083.05US3

ENCLOSURES (Check all that apply)☐

Fee Transmittal Form

☒

Fee Attached

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Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☐

Extension of Time Request

☐

Express Abandonment Request

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Information Disclosure Statement

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Certified Copy of Priority Document(s)

☐Reply to Missing Parts/
Incomplete Application☐Reply to Missing Parts
under 37 CFR 1.52 or 1.53☐

Drawing(s)

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Licensing-related Papers

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Petition

☐Petition to Convert to a
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Power of Attorney, Revocation

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After Allowance Communication to TC

☐Appeal Communication to Board
of Appeals and Interferences☒Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)☐

Proprietary Information

☐

Status Letter

☒Other Enclosure(s) (please identify
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Remarks

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Customer No. 34018 - Greenberg Traurig, LLP

Signature

Printed name

Gary R. Jarosik

Date

April 4, 2005

Reg. No.

35,906

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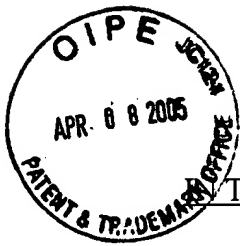
Ranni Matar

Date

April 4, 2005

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THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Scheer)	Examiner:	Cuff, Michael A.
)		
Serial No.:	09/867,200)	Art Unit:	3627
)		
Filed:	May 29, 2001)	Attny Doc.:	31083.05US3
)		
Title:	Method For Managing)		
	Inventory Within An)		
	Integrated Supply Chain)		

APPEAL BRIEF

Mail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 4-9 which rejection was set forth in the Office Action dated February 11, 2005.

A timely Notice of Appeal was filed.

The required fee of \$500.00 is enclosed.

This Appeal Brief is being filed in triplicate.

The Commissioner is hereby authorized to charge any fee deficiency or credit overpayment to deposit account number 50-2428 in the name of Greenberg Traurig.

Certificate of Mailing: I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Briefs – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 4th day of April, 2005.

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By:

Ranni Matar
Ranni Matar

I. Real Party In Interest

The real party in interest is W.W. Grainger, Inc.

II. Related Appeals And Interferences

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status Of The Claims

In the application, claims 4-9 remain pending and, having been finally rejected, are the subject of this appeal.

Claims 1-3 were canceled during the course of prosecution.

Appendix I provides a clean, double spaced copy of pending claims 4-9.

IV. Status Of Amendments

The claims are in condition for appeal – no further amendments to the claims are pending.

V. Summary Of The Claimed Subject Matter

With reference to Figure 8 and Paras. 200+ of the application for patent, independent claim 4 is generally directed to a computer-readable media having computer-executable instructions for managing inventory within a supply chain having a plurality of distribution points. For each of a plurality of items distributed within the supply chain a forecast of demand over a forecast period (408-411) is provided and the forecast of demand is then used to establish a critical stocking ratio (413) for each of the plurality of items. The critical stocking ratio indicates a total quantity of each of the plurality of items which can be held in inventory over the forecast period. The critical stocking ration is then used to allocate the total quantity of each of

the plurality of items which can be held in inventory over the forecast period among the plurality of distribution points in the supply chain by assigning over the forecast period a base stock level for each of the plurality of items at each of the plurality of distribution points in the supply chain (414) and a reorder point (415) for each of the plurality of items at each of the plurality of distribution points in the supply chain. The instructions also determine a replenishment method for each of the plurality of items at each of the plurality of distribution points in the supply chain and execute the replenishment method to create orders for items at any of the plurality of distribution points in the supply chain that fail to have a base stock level for any of the plurality of items, for example, as illustrated in Fig. 7 of the application for patent.

VI. Grounds Of Rejection To Be Reviewed On Appeal

1. Whether the rejection of claims 4-9 under 35 U.S.C. § 102 based upon Huang can be maintained when Huang simply fails to disclose, teach, or suggest, either expressly or inherently, each and every element, considering each and every word, set forth in the claims.

VII. Argument

A) Summary of the outstanding rejections of the claims

Pending claims 4-9 stand rejected under 35 U.S.C. § 102 as being anticipated by Huang (U.S. Patent No. 5,953,707).

In rejecting the claims, the Office Action of February 11, 2005 set forth a laundry list of elements selected from Huang, namely: in Fig. 16, a decision support system for management of an agile supply chain; at Col. 18, lines 13-15, a Demand Management Frame which requires the participation of two modules, namely, a “Sales Forecasting and Planning (‘SFP’) module” and a “Market Data Analysis (‘MDA’) module;” a “Forecast Reconciliation” at Col. 24, lines 33-64;

an “Inventory Planning;” a “Supply Requirement Planning;” and a “VMR (vendor managed replenishment).”

Nowhere, however, does the Office Action of February 11, 2005 set forth that these elements of Huang, alone or in combination, perform the instruction steps that are set forth in claims 4-9.

B) Applicable law

A rejection under 35 U.S.C. § 102 requires that the claimed invention, considered “as a whole,” be found in the reference being relied upon. Considering the claim “as a whole” requires not only consideration of each and every element set forth in the claims, but also requires consideration of the manner in which the claim elements are arranged and the manner in which the claim elements interrelate. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989); or *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

C) Remarks addressing the rejection of claim 4-9

Huang fails to disclose, teach, or suggest each and every element set forth in pending claims 4-9 and, for this reason, the rejection of the claims must be withdrawn.

More particularly, Huang, which is directed to nothing more than a system for generating reports to thereby provide a decision support system for an agile supply chain (Col. 11, lines 6-16 of Huang), fails to expressly or inherently disclose, teach, or suggest a computer-readable media having instructions for managing inventory within a supply chain as set forth in pending claims 4-9 when the claims are considered “as a whole.” For example, the “VMR” disclosed in Huang and cited to in the Office Action **does not** use the critical stocking ratio for each of a

plurality of items [which critical stocking ratio was established using a forecast of demand for each of the plurality of items] to allocate a total quantity of each of the plurality of items which can be held in inventory over the forecast period among a plurality of distribution points in a supply chain by assigning over the forecast period a base stocking level for each of the plurality of items at each of the plurality of distribution points in the supply chain and a reorder point for each of the plurality of items at each of the plurality of distribution points in the supply chain or execute a determined replenishment method for each of the plurality of items at each of the plurality of distribution points to create orders for items at any of the plurality of distribution points in the supply chain that fail to have a base stock level for any of the plurality of items thereby causing inventory within the supply chain to be managed in accordance with the critical stocking ratio for each of the plurality of items [which critical stocking ratio was established using a forecast of demand for each of the plurality of items] as is claimed. Not only does the VMR of Huang fail to use the claimed critical stocking ration [which critical stocking ratio was established using a forecast of demand for each of the plurality of items], it is noted that **the express disclosure of Huang teaches directly against the “VMR” making decisions based upon forecast data:**

VMR 84 is a process in which the supplier takes on the responsibility of managing the inventory at the customer site for the products it supplies. **This process operates on point-of sales demand as opposed to demand forecasts provided by the customers.**

(Col. 14, lines 5-9; emphasis added).

VMR is almost invariably based on the availability of direct access to point-of-sales data and the customer's inventory position.

(Col. 32, lines 21-23; emphasis added).

That Huang discloses, at most, a “critical stocking ratio [that] is based on POS data” has been acknowledged in the Advisory Action of March 16, 2005.

Thus, from the full and fair consideration of Huang, it is clear that the “VMR” of the Huang system, which relies on point-of-sales data, cannot be said to perform the claimed instruction steps of causing a replenishment method to be executed that creates orders for items at any of the plurality of distribution points in the supply chain that fail to have a base stock level for any of the plurality of items to thereby cause inventory within the supply chain to be managed in accordance with the critical stocking ratio, where the critical stocking ratio is required by the claims to be established through the use of forecast of demand. For at least this reason, the rejection of the claims must be withdrawn.

It is additionally noted that the Office Action of February 11, 2005 never alleges that the “VMR” of Huang, which executes “a process in which the supplier takes on the responsibility of managing the inventory at the customer site for the products it supplies” functions to allocate a total quantity of each of the plurality of items which can be held in inventory over the forecast period among a plurality of distribution points in a supply chain by assigning over the forecast period a base stocking level for each of the plurality of items at each of the plurality of distribution points in the supply chain and a reorder point for each of the plurality of items at each of the plurality of distribution points in the supply chain or executes a determined replenishment method for each of the plurality of items at each of the plurality of distribution points to create orders for items at any of the plurality of distribution points in the supply chain that fail to have a base stock level for any of the plurality of items to thereby cause inventory within the supply chain to be managed in accordance with the critical stocking ratio for each of the plurality of items. It is the position of the Appellant that the Office Action of February 11,

2005 fails to allege that the VMR or any element within Huang performs these claimed instruction steps for the very reason that no elements are disclosed within Huang that can be said to perform these claimed instructions steps.

At this time, the Appellant further notes that, contrary to the position taken in the Advisory Action of March 16, 2005, the pending claims do not “merely require ‘using’ forecast data.” Rather, the claims expressly set forth “using forecast of demand for each of the plurality of items to establish for each of the plurality of items a critical stocking ratio which indicates a total quantity of each of the items which can be held in inventory over the forecast period” which established critical stocking ratio is then used to allocate the total quantity of each of the plurality of items which can be held in inventory over the forecast period among the plurality of distribution points in the supply chain by assigning over the forecast period a base stock level for each of the plurality of items at each of the plurality of distribution points in the supply chain and a reorder point for each of the plurality of items at each of the plurality of distribution points in the supply chain. Thus, even if “forecast of demand is ‘used’ in the VMR strategic planning” as was alleged in the Advisory Action of March 16, 2005 (which does not appear to be supported by the plain disclosure within Huang), it still cannot be said that Huang, which has been acknowledged to disclose, at most, a critical stocking ratio based on POS data, discloses, teaches, or suggest the claimed computer-readable media instruction steps which, among other things, require the use of a critical stocking ratio established through the use of forecast of demand to manage the replenishment of items at a plurality of distribution points in a supply chain.

In sum, it is respectfully submitted that the elements of Huang cited to in the Office Action, when considered in light of the full disclosure of Huang, fail to disclose each and every claimed instruction step when the claimed instruction steps are considered “as a whole.” That

Huang fails to disclose each and every claimed instruction step when the claimed instruction steps are considered "as a whole" is particularly evidenced by the fact that the rejection of the claims never even asserts that the cited elements of Huang perform the claimed instruction steps considering each and every word set forth within those instruction steps. Accordingly, it is respectfully submitted that the rejection of the claims based upon Huang must be withdrawn.

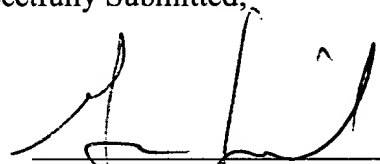
D) Conclusion

It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Board is respectfully requested.

Respectfully Submitted;

Date: April 4, 2005

By:



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APPENDIX I

4. A computer-readable media having computer-executable instructions for managing inventory within a supply chain having a plurality of distribution points, the instructions performing steps comprising:

providing for each of a plurality of items distributed within the supply chain a forecast of demand over a forecast period;

using the forecast of demand for each of the plurality of items to establish for each of the plurality of items a critical stocking ratio what indicates a total quantity of each of the plurality of items which can be held in inventory over the forecast period;

using the critical stocking ratio for each of the plurality of items to allocate the total quantity of each of the plurality of items which can be held in inventory over the forecast period among the plurality of distribution points in the supply chain by assigning over the forecast period a base stock level for each of the plurality of items at each of the plurality of distribution points in the supply chain and a reorder point for each of the plurality of items at each of the plurality of distribution points in the supply chain;

determining a replenishment method for each of the plurality of items at each of the plurality of distribution points in the supply chain; and

executing the replenishment method to create orders for items at any of the plurality of distribution points in the supply chain that fail to have a base stock level for any of the plurality of items thereby causing inventory within the supply chain to be managed in accordance with the critical stocking ratio.

5. The computer-readable media as recited in claim 4, wherein the instructions compile and aggregate historical demand data for use in providing the forecast of demand for each of the plurality of items.

6. The computer-readable media as recited in claim 5, wherein the historical demand data comprises data representative of demand created by a need to replenish each of the plurality of items at various ones of the plurality of distribution points within the supply chain.

7. The computer-readable media as recited in claim 5, wherein the historical demand data comprises data representative of demand created by a need to fulfill customer orders for each of the plurality of items.

8. The computer-readable media as recited in claim 4, wherein providing the forecast of demand for each of the plurality of items comprises taking into account historical effects of world factors.

9. The computer-readable media as recited in claim 4, wherein providing the forecast of demand for each of the plurality of items comprises considering a need for each of the plurality of items in performance of a maintenance task.